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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,579	10/24/2003	Michael Knaak	031456/267075	9031
826	7590	01/30/2006	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			KUHS, ALLAN R	
			ART UNIT	PAPER NUMBER
			1732	

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/692,579

Applicant(s)

KNAAK ET AL.

Examiner

Allan Kuhns

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1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) 31-60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-60 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 031104&082605.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

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1.Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-30, drawn to an apparatus for perforating a plastic film, classified in class 83, subclass 660.
- II. Claims 31-60, drawn to a method for preparing foam-in-bag cushions, classified in class 264, subclass 46.6.

2.The inventions are distinct, each from the other because:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus structure as claimed can be used to practice another and materially different process such as one in which an already foamed material is inserted into a bag formed from films and a perforating step is employed to degas the foam.

3.Because these inventions are distinct for the reasons given above and have acquired a separate status in the art requiring divergent fields of search for the respective inventions, restriction for examination purposes as indicated is proper.

4.During a telephone conversation with Ryan Cagle on January 11, 2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-30. Affirmation of this election must be made by applicant in replying to this Office action. Claims 31-60 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5.The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6.Claims 1-13, 15-28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brinkmeier et al. (5,802,945). Brinkmeier et al. disclose or suggest the basic claimed apparatus for perforating synthetic web materials (column 1, lines 16-17) including (1) a frame, (2) a main shaft 3 mounted in the frame so as to be rotatable about a central axis of the main shaft, (3) at least one needle roller coupled to the main shaft in radially offset position therefrom such that rotation of the main shaft through a part of a revolution moves the at least one needle roller through a predetermined arc of motion, the at least one needle roller being arranged to be freely rotatable about an axis of the needle roller, independently of the rotation of the main shaft, and (4) an actuator (crank 4) coupled with the main shaft and operable to rotate the main shaft so as to move the at least one needle roller through an arc such that at the end of the arc, the needle roller is in an operative position adjacent an advancing material web, engaging and perforating the material web, and at an opposite end of the arc, the at least one needle roller is in an inoperative position, away from the material web (note the discussion of disengagement from the material web at column 3, line 25-30). Brinkmeier et al. appear not to explicitly disclose the perforation of a film but do disclose forming a bag from a material web such that it would have been obvious to one of

ordinary skill in the art to use a film synthetic material in order to form a bag, as taught by Brinkmeier et al.

Brinkmeier et al. teach or suggest a pair of frame plates (1,2), as in claim 2, a connection between the plates, as in claims 3 and 18, and the main shaft extends between the frame plates, as in claim 4. Brinkmeier et al. also teach or suggest a needle roller coupled to a secondary shaft and arm-like structures between shafts, as in claims 5 and 20-22, and tapered pins extending from the needle roller, as in claims 6, 7 and 23. Official Notice is taken by the examiner that it is known to provide a roller with a cover, as in claims 8 and 26, which limits outside contact, as in claims 9 and 27, in order to protect operating personnel from injury. Brinkmeier et al. teach the presence of a backup roller, as in claim 10, which is operable in the manner of claim 11, and an actuator which is a rotary device, as in claims 13 and 28. The gaps between bristles in the backup roller of Brinkmeier et al. effectively form groove, as in claims 12 and 24. Brinkmeier et al. teach or suggest two needle and backup rollers, as in claims 16 and 17. The aspect that the apparatus is used in a foam-in-bag operation, as in claims 15, 18 and 30, is essentially a statement of an intended use of the apparatus, rather than a structural limitation. Brinkmeier et al. also teach or suggest connecting shafts, as in claim 25.

7. Claims 14 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brinkmeier et al. as applied to claims 1-13, 15-28 and 30 above, and further in view of Kitamura et al. (5,105, 227). Kitamura et al. teach the aspect of incorporating a rotary solenoid into a structure for moving a roller at column 5, lines 51-54. It would

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have been obvious to one of ordinary skill in the art to incorporate a rotary solenoid, as taught by Kitamura et al. into the apparatus of Brinkmeier et al. in order to eliminate the requirement for a hand crank and modernize the apparatus.

8. Other references denoted by "X" in the foreign search report were reviewed by the examiner but are viewed by the examiner as at most cumulative with respect to Brinkmeier et al.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (571) 272-1202. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni, can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Allan R. Kuhns*  
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PRIMARY EXAMINER AU 1732  
1-26-06